

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

<p>BRECO EQUITIES, LLC,</p> <p style="text-align: right;">Plaintiff,</p> <p style="text-align: center;">v.</p> <p>LAMOR WHITEHEAD and WHITEHEAD ESTATES LLC,</p> <p style="text-align: right;">Defendants.</p>	<p>Civil Action.</p> <p>Case No. 1:22-cv-8683</p> <p>NOTICE OF REMOVAL</p> <p>Removed from: Supreme Court of the State of New York, New York County; Index No. 653499/2022</p>
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To: Clerk of the United States District Court for the Southern District of New York

PLEASE TAKE NOTICE THAT:

1. Defendants LAMOR WHITEHEAD (“Bishop Whitehead”) and WHITEHEAD ESTATES LLC (“Whitehead Estates”) (collectively, “Defendants”) hereby remove to this Court the state court action described herein, pursuant to 28 U.S.C. §§ 1441(b), and 1446.
2. Pursuant to the provisions of 28 U.S.C. § 1446(d), promptly after filing this Notice of Removal, Defendants shall give written notice to all adverse parties, i.e., Plaintiff, at the address of Plaintiff’s counsel listed in Plaintiff’s state court filings and shall file a copy of this Notice of Removal with the clerk of the Supreme Court of the State of New York, New York County, which shall effect the removal.
3. On 09/23/2022, Plaintiff BRECO EQUITIES, LLC (“Plaintiff”) filed a Summons and Notice of Motion for Summary Judgement in Lieu of Complaint (“MSJ”) in the Supreme Court of the State of New York, New York County, styles as *BRECO EQUITIES, LLC v. LAMOR WHITEHEAD and WHITEHEAD ESTATES, LLC*, Index No. 653499/2022 (the “State Court Action”).
4. The State Court Action concerns an alleged “[commercial] loan for the original principal amount of \$250,000.00” (the “Loan”) whereby Plaintiff is now seeking “the entry of

judgement for Plaintiff and against the defendants, Lamor Whitehead and Whitehead Estates, LLC (together ‘Borrowers’), in the amount of \$283,149.28 plus interest calculated at the contractual default rate of twenty-five percent (25%) running from September 16, 2022, and for such other and further relief as the Court may deem just and proper.” *See* MEMORANDUM OF LAW IN SUPPORT OF PLAINTIFF’S MOTION FOR SUMMARY JUDGMENT IN LIEU OF COMPLAINT, p. 1 (NYSCEF DOC. NO. 3; p. 2 of 8).

5. This removal is based on diversity of citizenship pursuant to 28 U.S.C. § 1332(a).
6. None of the parties in interest properly joined and served as defendants is a citizen of the State of New York, where the State Court Action was brought.
7. Pursuant to 28 U.S.C. § 1332(a)(1), this Court has jurisdiction over this civil action because the matter in controversy exceeds the sum or value of \$75,000, exclusive of interest and costs, and is between citizens of different States.
8. In this case, the amount in controversy is “\$250,000.00” or “\$283,149.28 plus interest calculated at the contractual default rate of twenty-five percent (25%) running from September 16, 2022,” which exceeds the sum or value of \$75,000 as required pursuant to 28 U.S.C. § 1332(a). *Id.*
9. Bishop Whitehead is an individual or natural person.
10. “An individual’s citizenship, within the meaning of the diversity statute, is determined by his domicile[.]” *Van Buskirk v. United Grp. of Cos., Inc.*, 935 F.3d 49, 53 (2d Cir. 2019).
11. Bishop Whitehead at all times relevant herein, including at the time of the filing of the State Court Action, resided/resides and was/is domiciled in Paramus, New Jersey.
12. Bishop Whitehead is a citizen of the State of New Jersey.

13. Whitehead Estates is a limited liability company (“LLC”).
14. Because Whitehead Estates is an LLC, it “takes the citizenship of all of its members.”
Platinum-Montaur Life Scis., LLC v. Navidea Biopharmaceuticals, Inc., 943 F.3d 613, 615 (2d Cir. 2019).
15. Bishop Whitehead, a citizen of New Jersey, is the sole member of Whitehead Estates.
16. Therefore, Whitehead Estates is a citizen of the State of New Jersey.
17. Plaintiff is an LLC. See **Exhibit A**, Affidavit of David Brecher, p. 1, ¶ 1.
18. Because Plaintiff is an LLC, it “takes the citizenship of all of its members.” *Platinum-Montaur Life Scis., LLC v. Navidea Biopharmaceuticals, Inc.*, 943 F.3d 613, 615 (2d Cir. 2019).
19. Upon information and belief, David Brecher (“Mr. Brecher”) is the sole member of Plaintiff.
20. Mr. Brecher is an individual or natural person.
21. “An individual’s citizenship, within the meaning of the diversity statute, is determined by his domicile[.]” *Van Buskirk v. United Grp. of Cos., Inc.*, 935 F.3d 49, 53 (2d Cir. 2019).
22. Upon information and belief, Mr. Brecher’s domicile is in the State of Florida.
23. Therefore, upon information and belief, Plaintiff is a citizen of the State of Florida.
24. Hence, there is complete diversity of citizenship between the plaintiff and defendants in this action and the amount in controversy requirement is satisfied, thus, this Court has subject matter jurisdiction pursuant to 28 U.S.C. § 1332(a)(1).
25. The State Court Action was filed less than thirty (30) days ago, so this removal is timely.
26. Copies of all process, pleadings, and orders in the State Court Action is attached as **Ex. A**.
27. Defendants’ filing of this Notice of Removal is without waiver of their defenses/objections.

28. Pursuant to Local Civil Rule 81.1:

- 1) Plaintiff's residence and domicile is Florida; Bishop Whitehead's residence and domicile is New Jersey; and Whitehead Estate's residence and domicile is New Jersey.
- 2) Plaintiff's sole member Mr. Brecher's residence and domicile is in the State of Florida; Plaintiff is an LLC and was organized pursuant to the laws of the State of Delaware; Whitehead Estates' sole member Bishop Whitehead's residence and domicile is in the State of New Jersey; and Whitehead Estates was organized under the laws of the State of New York.
- 3) No parties are a corporation.
- 4) Upon information and belief, there is no assigned claim, so there is no corresponding information for any original owner of the claim and for each assignee to report.
- 5) The State Court Action was filed less than thirty (30) days ago on 09/23/2022. Defendants contest the purported service of any process in the State Court Action. However, Plaintiff purports via affidavits in the State Court Action that service was made on 9/23/22 and 10/1/22 (Whitehead Estates) and 10/3/22 (Bishop Whitehead).

WHEREFORE, Defendants give notice that the above-captioned civil action pending in the Supreme Court of the State of New York, County of New York, is removed to this Court.

Respectfully submitted,

Dated: New York, New York
October 12, 2022

s/ Brian L. Ponder
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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

<p>BRECO EQUITIES, LLC,</p> <p style="text-align: right;">Plaintiff,</p> <p style="text-align: center;">v.</p> <p>LAMOR WHITEHEAD and WHITEHEAD ESTATES LLC,</p> <p style="text-align: right;">Defendants.</p>	<p>Civil Action.</p> <p>Case No. 1:22-cv-8683</p> <p>CERTIFICATE OF SERVICE</p>
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I certify that a copy of the foregoing was served to:

<p>Adam M. Swanson, Esq. McCARTER & ENGLISH, LLP 825 Eighth Avenue, 31st Floor New York, New York 10019 <i>Attorneys for Plaintiff</i></p> <p>Via U.S.P.S. CERTIFIED MAIL/RETURN RECEIPT REQUESTED AND NYSCEF</p>	<p>Clerk of Court New York County Supreme Court, Civil Term 60 Centre Street New York County Courthouse New York, NY 10007</p> <p>VIA NYSCEF</p>
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Respectfully submitted,

Dated: New York, New York
October 12, 2022

s/ Brian L. Ponder
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